Introduction to the 2026–2027 Edition

Lesbian, Gay, Bisexual, and Transgender Family Law is the definitive resource for family law attorneys who are involved in cases involving LGBTQ people. This treatise provides a comprehensive, state-specific guide to a range of family law issues as they affect LGBTQ people. This resource not only provides a detailed overview of the existing law, but it also lays out potential arguments or approaches that can be raised when an LGBTQ person faces challenges or hurdles due to his or her sexual orientation or gender identity.

Topics include:

- Custody and visitation cases in which one parent seeks to use the other parent's sexual orientation or gender identity as a basis for denying or restricting custody or visitation
- Challenges LGBTQ people may face in the adoption and foster care context
- The legal parentage of children born to LGBTQ individuals or families through assisted reproductive technologies
- Whether and under what circumstances an LGBTQ's legal parental status will be recognized in other jurisdictions
- Access to and recognition of marriage and other legally recognized relationships for LGBTQ families
- Issues related to the dissolution and break ups of LGBTQ couples

Historically, courts adjudicating LGBTQ family law cases often applied rules and principles that departed from those that were applied in cases that did not involve LGBTQ people. For example, in the past, many LGBTQ parents who had children in the context of past different-sex relationships lost custody of their children based solely on their identity as an LGBTQ person. In the past, every state in the U.S. barred same-sex couples from marrying. Among other difficulties faced by these families was the fact that children

born to these same-sex couples often were not treated as the legal children of both members of the couple. As a result, if the same-sex couple ended their relationship, many courts concluded that only one member of the couple—usually the birth or genetic parent—was a legal parent, and that the other member of the couple was a legal stranger to the child.

Today, some of the challenges faced by LGBTQ families in the past have been mitigated. Most states now use the nexus test, under which a parent's sexual orientation or gender identity is irrelevant in a custody or visitation action unless there is evidence that the parent's sexual orientation or gender identity has harmed the child. There are now ways for both members of a same-sex couple to establish a legal relationship to a child born to or raised by the couple in many states. And same-sex couples can marry in all fifty states. If they get married, same-sex partners are now entitled to access the hundreds of important state and federal marital rights and benefits.

Despite these legal advancements, some LGBTQ parents face legal challenges and vulnerabilities. For example, there are still unresolved questions about how divorce courts should handle property that was accumulated during the nonmarital relationship, prior to the time the couple was legally permitted to marry. Transgender parents still face loss of custody and even parental rights based on their gender, and courts are still learning how to address the needs of transgender children when parents disagree. Family law lawyers working on cases involving LGBTQ people must anticipate and be prepared to respond to these and other questions that may arise.

What's new in the 2026–2027 edition:

- Updated discussion of statutes permitting adoption and foster placement agencies to refuse to provide services to LGBTQ people based on religious or moral objections and litigation regarding such refusals **(§§ 2:8, 2:12)**
- Updated discussion of the legal parentage of children born to same-sex married couples **(§§ 3:4, 5:22)**
- Discussion of new statutes regulating the parentage of children born through assisted reproduction, including new provisions in Delaware, Hawaii, Illinois, and Oregon **(Chapter 3)**
- Discussion of new statutes regulating surrogacy and the parentage of children born through surrogacy,

including new statutory provisions in Delaware, Hawaii, Illinois, and Oregon **(Chapter 4)**

- Discussion of new cases and statutes addressing de facto parents **(§§ 7:4, 7:5, 7:8, 7:9, 7:16)**
- Updates on laws addressing gender marker changes on identity documents, including providing options for nonbinary gender markers on birth certificates and drivers licenses and changes in requirements for amending gender markers on birth certificates and other identity documents **(§ 9:2)**
- Discussion of new cases addressing the custody of transgender children and new legislation and related cases limiting the availability of medical care to transgender children **(§ 9:10)**

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